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Department of State TELEGRAM

DEPARTMENT OF STATE A/CDC/MR
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XDS or XGDS EXT. DATE
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ACTION L-03

INFO OCT-01 EA-07 ISO-00 CIAE-00 DODE-00 PM-04 H-02 INR-07

NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06 EB-07

OMB-01 CONE-00 TRSE-00 JUSE-00 /062 W
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TO SECSTATE WASHDC 6005

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E.O. 11652: N/A
TAGS: PGOV, PFOR, KS
SUBJECT: CABINET TASK FORCE ON QUESTIONABLE PAYMENTS ABROAD: FOREIGN LAWS ON QUESTIONABLE PAYMENTS

REF: STATE 94647

1. FOLLOWING ARE REPLIES AND COMMENTS REQUESTED IN PARA 2, REFTEL, WITH ALPHABETICAL LETTERS CORRESPONDING TO REFTEL AND BRIEF SUMMARIES REQUESTED IN PARA 3 INCLUDED:

A. (1) YES
(2) GOVERNMENT OFFICIALS ARE PROHIBITED FROM RECEIVING ANYTHING OF VALUE IN THE PERFORMANCE OF THEIR DUTIES.
(3) ARTICLE 61 OF THE GOVERNMENT OFFICIALS CONTROL LAW (PROMULGATED APRIL 17, 1963 AS LAW 1325) PROHIBITS ANY DIRECT OR INDIRECT OFFER, SOLICITATION, GIVING OR RECEIPT OF MONEY OR OTHER THINGS OF VALUE. ARTICLE 129 OF THE CRIMINAL CODE STATES QUOTE A PUBLIC OFFICIAL OR AN ARBITRATOR WHO RECEIVES, DEMANDS OR PROMISES TO ACCEPT A BRIBE IN CONNECTION WITH HIS DUTIES, SHALL BE PUNISHED BY PENAL SERVITUDE FOR NOT MORE THAN FIVE YEARS OR SUSPENSION OF QUALIFICATIONS FOR NOT MORE THAN TEN YEARS UNQUOTE.
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B. (1) NO
(2) THIS IS NOT NECESSARY SINCE RECEIVING PAYMENTS IS PROHIBITED BY ARTICLE 61 OF THE GOVERNMENT OFFICIALS CONTROL LAW.
(3) SEE A(3).

C. (1) YES
(2) AGENTS ENGAGING IN COMMODITY SALES BROKERAGE TRANSACTIONS MUST REGISTER, AND IF A FOREIGNER MUST OBTAIN PERMISSION OF THE MINISTRY OF COMMERCE AND INDUSTRY. VIOLATORS ARE SUBJECT TO ONE YEARS IN JAIL OR A FINE OF NOT MORE THAN 200,000 WON. ON A GENERAL BASIS, ILLEGAL TRANSACTIONS BY AGENTS WITH GOVERNMENT OFFICIALS ARE COVERED UNDER ARTICLES 129-135 OF THE CRIMINAL CODE CONCERNING BRIBERY.
(3) ARTICLE 6 OF THE FOREIGN TRADE ACT STATES QUOTE ANY PERSON INTENDING TO ENGAGE IN THE COMMODITY SALES BROKERAGE TRADE BUSINESS MUST COMPLETE REGISTRATION AT THE MINISTRY OF COMMERCE AND INDUSTRY IN SUCH MANNER AS MAY BE PRESCRIBED BY PRESIDENTIAL DECREE: PROVIDED, HOWEVER, THAT IN CASE OF A FOREIGNER, HE SHALL OBTAIN PERMISSION OF THE MINISTRY OF COMMERCE AND INDUSTRY. THE MINISTER OF COMMERCE AND INDUSTRY SHALL, WHEN INTENDING TO GRANT A PERMISSION PROVIDED FOR IN THE PROVISO OF THE PRECEDING PARAGRAPH, SHALL REFER THIS MATTER TO THE FOREIGN TRADE COMMITTEE FOR ITS DELIBERATION UNQUOTE. ARTICLE 129 IS QUOTED UNDER A(3) WHILE OTHER ARTICLES WILL BE POUCHED.

D. (1) YES
(2) FOREIGNERS ARE PROHIBITED FROM MAKING POLITICAL CONTRIBUTIONS. DOMESTIC POLITICAL CONTRIBUTIONS ARE MADE THROUGH A CENTRAL ELECTION MANAGEMENT COMMITTEE WHO ALLOCATES THE MONEY TO CANDIDATES.
(3) ARTICLE 3 OF THE LAW ON THE POLITICAL FUND PROMULGATED ON JUNE 14, 1973 STATES ANY PERSON WISHING TO MAKE CONTRIBUTIONS TO POLITICAL ORGANIZATIONS MAY DO SO THROUGH THE CENTRAL ELECTION MANAGEMENT COMMITTED EXCLUDING, HOWEVER, FOREIGNERS, FOREIGN CORPORATIONS AND FOREIGN ORGANIZATIONS, NOT ESTABLISHED

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UNDER KOREAN LAW.

E. (1) YES
(2) CONTRIBUTORS UNDER D ARE PUBLISHED BY PUBLIC ANNOUNCEMENT.
(3) ARTICLE 5 OF THE LAW ON THE POLITICAL FUND PROVIDES FOR THE CENTRAL ELECTION MANAGEMENT COMMITTEE TO PUBLISH THE NAMES OF ALL CONTRIBUTORS TO THE FUND EXCEPT CONTRIBUTORS MAY DEMAND THE NONDISCLOSURE OF THEIR NAMES.

F. (1) YES
(2) THE OFFER, SOLICITATION, PAYMENT OR RECEIPT OF KICKBACKS OR OTHER UNDISCLOSED PAYMENTS OR COMMISSIONS ARE PROHIBITED BY THE CRIMINAL CODE UNDER QUOTE CRIMES OF EMBEZZLEMENT AND BREACH OF TRUST UNQUOTE.
(3) CHAPTER X OF THE CRIMINAL CODE, CRIMES OF EMBEZZLEMENT AND BREACH OF TRUST STATE-QUOTE ARTICLE 355 (EMBEZZLEMENT AND BREACH OF TRUST) (1) A PERSON WHO, HAVING THE CUSTODY OF ANOTHER'S PROPERTY, EMBEZZLES IT OR REFUSES TO RETURN IT, SHALL BE PUNISHED BY PENAL SERVITUDE FOR NOT MORE THAN FIVE YEARS OR BY A FINE NOT EXCEEDING FIFTY THOUSAND WON. (2) THE PRECEDING PARAGRAPH SHALL APPLY TO A PERSON WHO, ADMINISTERING ANOTHER'S BUSINESS, OBTAINS PECUNIARY ADVANTAGE OR CAUSES A THIRD PERSON TO DO SO FROM THE LATTER IN VIOLATION OF HIS DUTY, THEREBY CAUSING LOSS TO SUCH PERSON.
ARTICLE 356 (OCCUPATIONAL EMBEZZLEMENT: OCCUPATIONAL BREACH OF TRUST) A PERSON WHO COMMITS THE CRIME OF THE PRECEDING ARTICLE IN VIOLATION OF THE DUTIES OF HIS OCCUPATION, SHALL BE PUNISHED BY PENAL SERVITUDE FOR NOT MORE THAN TEN YEARS OR BY A FINE NOT EXCEEDING FIFTY THOUSAND WON.
ARTICLE 357 (RECEIVING OR GIVING BRIBE BY BREACH OF TRUST) (1) A PERSON WHO ADMINISTERING ANOTHER'S BUSINESS, RECEIVES PROPERTY OR OBTAINS PECUNIARY ADVANTAGE FROM A THIRD PERSON IN RESPONSE TO AN ILLEGAL SOLICITATION CONCERNING HIS DUTY, SHALL BE PUNISHED BY PENAL SERVITUDE FOR NOT MORE THAN FIVE YEARS OR BY A FINE NOT EXCEEDING FIFTY THOUSAND WON.

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(2) A PERSON WHO GIVES THE PROPERTY OR PECUNIARY ADVANTAGE AS SPECIFIED IN THE PRECEDING PARAGRAPH, SHALL BE PUNISHED BY PENAL SERVITUDE FOR NOT MORE THAN TWO YEARS OR BY A FINE NOT EXCEEDING TWENTY-FIVE THOUSAND WON. (3) THE PROPERTY MENTIONED IN PARAGRAPH (1) WHICH HAS BEEN OBTAINED BY THE OFFENDER SHALL BE CONFISCATED. WHEN CONFISCATION IS IMPOSSIBLE OR PECUNIARY ADVANTAGE HAS BEEN OBTAINED, THE EQUIVALENT PRICE THEREOF SHALL BE COLLECTED. UNQUOTE.

2. ENGLISH TRANSLATIONS, SOME OFFICIAL, SOME UNOFFICIAL, OF THE FULL TEXTS OF RELEVANT LAWS ARE BEING POUCHED TO L/FN.

3. ATTENTION IS DRAWN TO SEOUL 0660 IN RESPONSE TO STATE 260160, BRIBERY OF FOREIGN OFFICIALS BY U.S. FIRMS OPERATING ABROAD, COVERING INVOLVEMENT BY AGENTS IN SALES TO GOVERNMENTS.
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